

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OLGA B. ARIZAGA,

Plaintiff,

-against-

REINA DE LAW NUBE AZOGUEZ, INC., *et al.*,

Defendants.
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AMON, United States District Judge:

NOT FOR PUBLICATION

ORDER

18-CV-00621 (CBA) (RML)

Plaintiff Olga B. Arizaga (“Arizaga”) filed the instant suit on January 31, 2018, asserting claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, and the New York Labor Law. (ECF Docket Entry (“D.E.”) # 1.) On June 8, 2018, Arizaga requested that the Clerk of Court file a certificate of default. (D.E. # 19.) On June 14, 2018, the Clerk of Court denied the request due to missing supporting documentation. (D.E. dated 6/14/2018.) On August 24, 2018, after two months of inactivity, Magistrate Judge Robert M. Levy issued an Order to Show Cause why the case should not be dismissed for failure to prosecute. (D.E. dated 8/24/2018.) Arizaga did not respond to that order. On November 15, 2018, Magistrate Judge Levy issued a Report & Recommendation (“R&R”) recommending that the case be dismissed for failure to prosecute. (D.E. # 20.) Arizaga filed an objection, (D.E. # 21), and upon construing that objection as a motion for reconsideration, Magistrate Judge Levy vacated the R&R, (D.E. dated 12/18/2018). The Clerk of Court entered default on February 11, 2019, (D.E. # 23), and Arizaga filed a motion for default judgment on May 2, 2019, (D.E. # 25). This Court referred the motion for default judgment to Magistrate Judge Levy for an R&R. (D.E. dated 5/7/2019.) Magistrate Judge Levy scheduled a damages hearing for May 24, 2019, (D.E. # 26), but that hearing was adjourned four times on

Arizaga's motion, (D.E. ## 27, 28, 29, 31). In the fourth such adjournment request, counsel indicated that they had not been able to communicate with Arizaga. (D.E. # 31.) Magistrate Judge Levy ordered counsel to attempt to contact Arizaga, and stated that "[i]f counsel is unable to reach plaintiff, the court may recommend dismissal for failure to prosecute." (D.E. dated 2/19/2020.) On March 19, 2020, Arizaga's counsel filed a status report indicating that while they had been "unable to connect with the Plaintiff," they wanted to nonetheless proceed with the case and stated that damages could be calculated based upon Arizaga's affidavit alone, without a hearing. (D.E. # 32.) On April 13, 2020, Magistrate Judge Levy issued a thorough and well-reasoned R&R recommending dismissal for failure to prosecute. (D.E. # 33.)

No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). The Court has reviewed the record and, finding no clear error, adopts the R&R as the opinion of the Court.

The Court therefore dismisses this case for failure to prosecute, and the Clerk of Court is directed to close the case.

SO ORDERED.

Dated: May 12, 2020
Brooklyn, New York

/s/ Carol Bagley Amon
Carol Bagley Amon
United States District Judge